APPENDIX

Statutes

DALLAS CITY ORDINANCE NO. 11,284

MOTION PICTURE CLASSIFICATION ORDINANCE

§ 46A-1 Definition of Terms
§ 46A-2 Establishment of Classification Board
§ 46A-3 Classification Procedure
§ 46A-4 Offenses
§ 46A-5 License
§ 46A-6 Revocation or suspension of license
§ 46A-7 Judicial Review
§ 46A-8 Public Nuisances
§ 46A-9 Injunctions
§ 46A-10 Exception to State Law
§ 46A-11 Severability Clause

Section 46A-1. *Definition of Terms:*

(a) "Film" means any motion picture film or series of films, whether full length or short subject, but does not include newsreels portraying actual current events or pictorial news of the day.

(b) "Exhibit" means to project a film at any motion picture theatre or other public place within the City of Dallas to which tickets are sold for admission.

(c) "Exhibitor" means any person, firm or corporation which exhibits a film.

(d) "Young person" means any person who has not attained his sixteenth birthday.

(e) "Board" means the Dallas Motion Picture Classification Board established by Section 46A-2 of this ordinance.

(f) "Not suitable for young persons" means:

(1) Describing or portraying brutality, criminal violence or depravity in such a manner as to be, in the judgment of the Board, likely to incite or encourage crime or delinquency on the part of young persons; or

(2) Describing or portraying nudity beyond the customary limits of candor in the community, or sexual promiscuity or extra-marital or abnormal sexual relations in such a manner as to be, in the judgment of the Board, likely to incite or encourage delinquency or sexual promiscuity on the part of young persons or to appeal to their prurient interest.

A film shall be considered 'likely to incite or encourage' crime delinquency or sexual promiscuity on the part of young persons, if, in the judgment of the Board, there is a substantial probability that it will create the impression on young persons that such conduct is profitable, desirable, acceptable, respectable, praiseworthy or commonly accepted. A film shall be considered as appealing to 'prurient interest' of young persons, if in the judgment of the Board, its calculated or dominant effect on young persons is substantially to arouse sexual desire. In determining whether a film is 'not suitable for young persons', the Board shall consider the film as a whole, rather than isolated portions, and shall determine whether its harmful effects outweigh artistic or educational values such film may have for young persons.

(g) 'Classify' means to determine whether a film is:

(1) Suitable for young persons, or;

(2) Not suitable for young persons.

(h) 'Advertisement' means any commercial promotional material initiated by an exhibitor designed to bring a film to public attention or to increase the sale of tickets to exhibitions of same, whether by newspaper, billboard, motion picture, television, radio, or other media within or originating within the City of Dallas.

(i) 'Initial exhibition' means the first exhibition of any film within the City of Dallas.

(j) 'Subsequent exhibition' means any exhibition subsequent to the initial exhibition, whether by the same or a different exhibitor.

(k) 'File' means to deliver to the City Secretary for safekeeping as a public record of the City of Dallas.

(l) 'Classification order' means any written determination by a majority of the Board classifying a film, or granting or refusing an application for change of classification.

(m) The term 'Board' as used and applied in subsection (a) of Section 46A-7 shall include the City of Dallas when attempting to enforce this ordinance and the City Attorney of the City of Dallas when representing the Board or the City of Dallas.

Section 46A-2. *Establishment of Board.*

There is hereby created a Board to be known as the Dallas Motion Picture Classification Board which shall be composed of a Chairman and Eight Members to be appointed by the Mayor and City Council of the City of Dallas, whose terms shall be the same as members of the City Council. Such members shall serve without pay and shall adopt such rules and regulations as they deem best governing their

action, proceeding and deliberations and time and place of meeting. These rules and regulations shall be subject to approval of the City Council. If a vacancy occurs upon the Board by death, resignation or otherwise, the governing body of the City of Dallas shall appoint a member to fill such vacancy for the unexpired term.

The Chairman and all Members of the Board shall be good, moral, law-abiding citizens of the City of Dallas, and shall be chosen so far as reasonably practicable in such a manner that they will represent a cross section of the community. Insofar as practicable, the members appointed to the Board shall be persons educated and experienced in one or more of the following fields: art, drama, literature, philosophy, sociology, psychology, history, education, music, science or other related fields. The City Secretary shall act as Secretary of the Board.

Section 46A-3. *Classification Procedure:*

(a) Before any initial exhibition, the exhibitor shall file a proposed classification of the film to be exhibited, stating the title of the film and the name of the producer, and giving a summary of the plot and such other information as the Board may by rule require, together with the classification proposed by the exhibitor. The Board shall examine such proposed classification, and if it approves same, shall mark it 'approved' and file it as its own classification order. If the Board fails to act, that is, either file a classification order or hold a hearing within five (5) days after such proposed classification is filed, the proposed classification shall be considered approved.

(b) If upon examination of the proposed classification a majority of the Board is not satisfied that it is proper, the

Chairman shall direct the exhibitor to project the film before any five (5) or more members of the Board, at a suitably equipped place and at a specified time, which shall be the earliest time practicable with due regard to the availability of the film. The exhibitor, or his designated representative, may at such time make such statement to the Board in support of his proposed classification and present such testimony as he may desire. Within two (2) days, the Board shall make and file its classification of the film in question.

(c) Any initial or subsequent exhibitor may file an application for a change in the classification of any film previously classified. No exhibitor shall be allowed to file more than one (1) application for change of classification of the same film. Such application shall contain a sworn statement of the grounds upon which the application is based. Upon filing of such application, the City Secretary shall bring it immediately to the attention of the Chairman of the Board, who upon application by the exhibitor shall set a time and place for a hearing and shall notify the applicants and all interested parties, including all exhibitors who may be exhibiting or preparing to exhibit the film. The Board shall view the film and at such hearing, hear the statements of all interested parties, and any proper testimony that may be offered, and shall within two (2) days thereafter make and file its order approving or changing such classification. If the classification of a film is changed as a result of such hearing to the classification 'not suitable for young persons', the exhibitors showing the film shall have seven (7) days in which to alter their advertising and audience policy to comply with such classification.

(d) Upon filing by the Board of any classification order, the City Secretary shall immediately issue and mail a notice of classification to the exhibitor involved and to any other exhibitor who shall request such notice.

(e) A classification shall be binding on any subsequent exhibitor unless and until he obtains a change of classification in the manner above provided.

Section 46A-4. *Offenses:*

(a) It shall be unlawful for any exhibitor or his employee:

(1) To exhibit any film which has not been classified as provided in this ordinance.

(2) To exhibit any film classified 'not suitable for young persons' if any current advertisement of such film by such exhibitor fails to state clearly the classification of such film.

(3) To exhibit any film classified 'not suitable for young persons' without keeping such classification posted prominently in front of the theatre in which such film is being exhibited.

(4) Knowingly to sell or give to any young person a ticket to any film classified 'not suitable for young persons'.

(5) Knowingly to permit any young person to view the exhibition of any film classified 'not suitable for young persons'.

(6) To exhibit any film classified 'not suitable for young persons' or any scene or scenes from such a film, or from an unclassified film, whether moving or still, in

the same theatre and on the same program with a film classified 'suitable for young persons'; provided that any advertising preview or trailer containing a scene or scenes from an unclassified film or a film classified 'not suitable for young persons' may be shown at any time if same has been separately classified as 'suitable for young persons' under the provisions of Section 46A-3 of this ordinance.

(7) To make any false or willfully misleading statement in any proposed classification, application for change of classification, or any other proceeding before the Board.

(8) To exhibit any film classified 'not suitable for young persons' without having in force the license hereinafter provided.

(b) It shall be unlawful for any young person:

(1) To give his age falsely as sixteen (16) years of age or over, for the purpose of gaining admittance to an exhibition of a film classified 'not suitable for young persons.'

(2) To enter or remain in the viewing room of any theatre where a film classified 'not suitable for young persons' is being exhibited.

(3) To state falsely that he or she is married for the purpose of gaining admittance to an exhibition of a film classified as 'not suitable for young persons.'

(c) It shall be unlawful for any person:

(1) To sell or give any young person a ticket to an exhibition of a film classified 'not suitable for young persons.'

(2) To make any false or willfully misleading statement in an application for change of classification or in any proceeding before the Board.

(3) To make any false statements for the purpose of enabling any young person to gain admittance to the exhibition of a film classified 'not suitable for young persons.'

(d) To the extent that any prosecution or other proceeding under this ordinance, involves the entering, purchasing of a ticket, or viewing by a young person of a film classified 'not suitable for young persons', it shall be a valid defense that such young person was accompanied by his parent or legally appointed guardian, husband or wife, throughout the viewing of such film.

Section 46A-5. *License*:

Every exhibitor holding a motion picture theatre or motion picture show license issued pursuant to Chapter 46 of the 1960 Revised Code of Civil and Criminal Ordinances of the City of Dallas shall be entitled to issuance of a license by the City Secretary to exhibit films classified 'not suitable for young persons'.

Section 46A-6. *Revocation or suspension of license*:

Whenever the City Attorney or any person acting under his direction, or any ten (10) citizens of the City of Dallas, shall file a sworn complaint with the City Secretary stating that any exhibitor has repeatedly violated the provisions of this ordinance, or that any exhibitor has persistently failed to use reasonable diligence to determine whether those seeking admittance to the exhibition of a film classified 'not suit-

able for young persons' are below the age of sixteen (16), the City Secretary shall immediately bring such complaint to the attention of the City Council who shall set a time and place for hearing such complaint and cause notice of such hearing to be given to the complainants and to the exhibitor involved. The City Council shall have authority to issue subpoenas requiring witnesses to appear and testify at such hearing, and any party to such hearing shall be entitled to such process. If, after hearing the evidence, the City Council shall find the charges in such complaint to be true, it shall issue and file and order revoking or suspending the license above provided, insofar as it grants the privilege of showing such classified pictures, for a specific period not to exceed one (1) year, or may issue a reprimand if it is satisfied that such violation will not continue.

The City Council likewise, after notice and hearing, may revoke or suspend the license of any exhibitor who has refused or unreasonably failed to produce or delayed the submission of a film for review, when requested by the Board.

Section 46A-7. *Judicial Review*:

(a) Within two (2) days after the filing of any classification by the Board, other than an order approving the classification proposed by an exhibitor, any exhibitor may file a notice of non-acceptance of the Board's classification, stating his intention to exhibit the film in question under a different classification. Thereupon it shall be the duty of the Board to do the following:

(1) Within three (3) days thereafter to make application to a District Court of Dallas County, Texas, for a temporary and a permanent injunction to enjoin such

defendant-exhibitor, being the exhibitor who contests the classification, from exhibiting the film in question contrary to the provisions of this ordinance.

(2) To have said application for temporary injunction set for hearing within five (5) days after the filing thereof. In the event the defendant-exhibitor appears at or before the time of the hearing of such temporary injunction, waives the notice otherwise provided by the Texas Rules of Civil Procedure, and requests that at the time set for such hearing the Court proceed to hear the case under the Texas Rules of Civil Procedure for permanent injunction on its merits, the Board shall be required to waive its application for temporary injunction and shall join in such request. In the event the defendant-exhibitor does not waive notice and/or does not request an early hearing on the Board's application for permanent injunction, it shall nevertheless be the duty of the board to obtain the earliest possible setting for such hearing under the provisions of State law and the Texas Rules of Civil Procedure.

(3) If the injunction is granted by the trial court and the defendant-exhibitor appeals to the Court of Civil Appeals, the Board shall waive any and all statutory notices and times as provided for in the Texas State Statutes and Texas Rules of Civil Procedure, and shall within five (5) days after receiving a copy of appealing exhibitor's brief, file its reply brief, if required, and be prepared to submit the case upon oral submission or take any other reasonable action requested by the appealing exhibitor to expedite the submission of the case to the Court of Civil Appeals, and

shall upon request of the appealing exhibitor, jointly with such exhibitor, request the Court of Civil Appeals to advance the cause upon the docket and to give it a preferential setting the same as is afforded an appeal from a temporary injunction or other preferential matters.

(4) If the Court of Civil Appeals should by its judgment affirm the judgment of the trial court granting the injunction and the appealing exhibitor should file an application for writ of error to the Texas Supreme Court, the Board shall be required to waive any and all notices and times as provided for in the Texas State Statutes and the Texas Rules of Civil Procedure, and shall within five (5) days after receiving a copy of the application for writ of error, file its reply brief, if required, and be prepared to submit the case upon oral submission or take any other reasonable action requested by the appealing exhibitor to expedite the submission of the case to the Supreme Court and shall upon request of the appealing exhibitor, jointly with such exhibitor, request the Supreme Court to advance the cause upon the docket and to give it a preferential setting the same as is afforded an appeal from a temporary injunction or other preferential matters.

(5) If the District Court denies the Board's application for injunction, and the Board elects to appeal, the Board shall be required to waive all periods of time allowed it by the Texas Rules of Civil Procedure and if a motion for a new trial is required, shall file said motion within two (2) days after the signing of the judgment, (or on the following Monday if said period ends on a Saturday or Sunday, or on the day following if

the period ends on a Legal Holiday), shall not amend said motion and shall obtain a hearing on such motion within five (5) days time. If no motion for a new trial is required as a prerequisite to an appeal under the Texas Rules of Civil Procedure, the Board shall not file such a motion. Within ten (10) days after the judgment is signed by the District Court denying such injunction or within ten (10) days after the order overruling the Board's motion for new trial is signed, if such motion is required, the Board shall complete all steps necessary for the perfection of its appeal to the Court of Civil Appeals, including the filing of the Transcript, Statement of Facts and Appellant's brief. Failure to do so shall constitute an abandonment of the appeal. On filing the record with the Court of Civil Appeals, the Board shall file a motion to advance requesting the Court to give a preferential setting the same as is afforded an appeal from a temporary injunction or other preferential matters.

(6) If the Court of Civil Appeals reverses the trial court after the trial court has granted an injunction, or if the Court of Civil Appeals refuses to reverse the trial court after that court has failed to grant an injunction, then if the Board desires to appeal from the decision of the Court of Civil Appeals by writ of error to the Supreme Court of the State of Texas, it must file its motion for rehearing within two (2) days of rendition of the decision of the Court of Civil Appeals (or on the following Monday, if said period ends on a Saturday or Sunday, or on the day following if the period ends on a Legal Holiday), and shall file its application for writ of error within ten (10) days after

the Court of Civil Appeals' order overruling such motion for rehearing, and failure to do shall waive all rights to appeal from the decision of the Court of Civil Appeals. At the time of filing the application for writ of error, the Board shall also request the Supreme Court to give the case a preferential setting and advance the same on the docket.

(b) The filing of such notice of non-acceptance shall not suspend or set aside the Board's order, but such order shall be suspended at the end of ten (10) days after the filing of such notice unless an injunction is issued within such period.

(c) Failure of any exhibitor to file the notice of non-acceptance within two (2) days as required in Subdivision (1) of this Section 46A-7, shall constitute acceptance of such classification order and such exhibitor shall be bound by such order in all subsequent proceedings except such proceedings as may be had in connection with any application for change of classification under Subdivision (c) of Section 46A-3 above.

Section 46A-8. *Public Nuisances*:

The following acts are declared to be public nuisances:

(a) Any violation of Subdivisions (1), (2), (3), or (6), of Subdivision (a) of Section 46A-4 of this ordinance.

(b) Any exhibition of a film classified as 'not suitable for young persons' at which more than three (3) young persons are admitted.

(c) Any exhibition of a film classified as 'not suitable for young persons' by an exhibitor who fails to

use reasonable diligence to determine whether persons admitted to such exhibition are persons under the age of sixteen (16) years.

(d) Any exhibition of a film classified as 'not suitable for young persons' by an exhibitor who has been convicted of as many as three (3) violations of Subdivisions (4) or (5) of Subdivision (a) of Section 46A-4 of this ordinance in connection with the exhibition of the same film.

Section 46A-9. *Injunctions*:

Whenever the Board has probable cause to believe that any exhibitor has committed any of the acts declared in Section 46A-8 above to be a public nuisance, the Board shall have the duty to make application to a court of competent jurisdiction for an injunction restraining the commission of such acts.

Section 46A-10. *Exception to State Law*:

Nothing in this ordinance shall be construed to regulate public exhibitions pre-empted by Article 527 of the Penal Code of the State of Texas, as amended.

Section 46A-11. *Severability Clause*:

Should any section, subsection, sentence, provision, clause or phrase be held to be invalid for any reason, such holding shall not render invalid any other section, subsection, sentence, provision, clause or phrase of this ordinance, and the same are deemed severable for this purpose."

SECTION 2. That any person who shall violate any provisions of this ordinance shall be guilty of a misdemeanor

and upon conviction thereof shall be subject to a fine not to exceed Two Hundred Dollars ($200.00) and each offense shall be deemed to be a separate violation and punishable as a separate offense, and each day that a film is exhibited which has not been classified according to this ordinance shall be a separate offense.

SECTION 3. That Ordinance No. 10963 heretofore enacted by the City Council of the City of Dallas on April 5, 1965, be and the same is hereby in all things repealed and held for naught, and this ordinance is enacted in lieu thereof.

SECTION 4. The fact that Ordinance No. 10963 previously passed by the City Council of the City of Dallas has been declared to be unenforceable in the Courts by the Federal District Court, creates an urgency and an emergency in the preservation of the public peace, comfort and general welfare and requires that this ordinance shall take effect immediately from and after its passage, and it is accordingly so ordained.

New York Penal Law*

§ 484-h. EXPOSING MINORS TO HARMFUL MATERIALS

1. Definitions. As used in this section:

(a) "Minor" means any person under the age of seventeen years.

(b) "Nudity" means the showing of the human male or female genitals, pubic area or buttocks with less than a full opaque covering, or the showing of the female breast with

* The equivalent statute in the 1967 revised Penal Law is contained in Sections 235.20-235.22.

less than a fully opaque covering of any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernibly turgid state.

(c) "Sexual conduct" means acts of masturbation, homosexuality, sexual intercourse, or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks or, if such person be a female, breast.

(d) "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

(e) "Sado-masochistic abuse" means flagellation or torture by or upon a person clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.

(f) "Harmful to minors" means that quality of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sado-masochistic abuse, when it:

(i) predominantly appeals to the prurient, shameful or morbid interest of minors, and

(ii) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors, and

(iii) is utterly without redeeming social importance for minors.

(g) "Knowingly" means having general knowledge of, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry of both:

(i) the character and content of any material described herein which is reasonably susceptible of examination by the defendant, and

(ii) the age of the minor, provided however, that an honest mistake shall constitute an excuse from liability hereunder if the defendant made a reasonable bona fide attempt to ascertain the true age of such minor.

2. It shall be unlawful for any person knowingly to sell or loan for monetary consideration to a minor:

(a) any picture, photograph, drawing, sculpture, motion picture film, or similar visual representation or image of a person or portion of the human body which depicts nudity, sexual conduct or sado-masochistic abuse and which is harmful to minors, or

(b) any book, pamphlet, magazine, printed matter however reproduced, or sound recording which contains any matter enumerated in paragraph (a) of subdivision two hereof, or explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct or sado-masochistic abuse, and which, taken as a whole, is harmful to minors.

3. It shall be unlawful for any person knowingly to exhibit for a monetary consideration to a minor or knowingly to sell to a minor an admission ticket or pass or knowingly to admit a minor for a monetary consideration to premises whereon there is exhibited, a motion picture, show or other presentation which, in whole or in part, depicts nudity, sexual conduct or sado-masochistic abuse and which is harmful to minors.

4. A violation of any provision hereof shall constitute a misdemeanor. Added L. 1965, c. 327, eff. Sept. 1, 1965.